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¹ Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 micro volts per meter (“µV/m”) at three meters. 47 CFR § 15.239. Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed Part 15 transmitter.

continued unlicensed operations could result in additional enforcement action.² On July 24, 2013, the New York Office received a response to the NOUO confirming the removal of the broadcast equipment from the building's roof and basement. On July 31, 2013, the agents verified the removal of the broadcast antenna from the building's roof.

3. On August 11, 2015, two agents from the New York Office used mobile direction-finding techniques to identify the source of radiofrequency transmissions on the frequency 95.1 MHz as an FM antenna mounted on the roof of another multi-family dwelling, located at 92-01 Lamont Avenue, Queens, New York. The agent took field strength measurements of the station's signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. The agent consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 95.1 MHz at or near 92-01 Lamont Avenue. On August 26, 2015, after using direction-finding techniques to confirm the continued presence of a station operating on 95.1 MHz at 92-01, Lamont Avenue, the agents contacted the building superintendent, who identified Mr. Gerez as the owner and operator of the broadcast equipment and provided the agents with the same contact information that the building superintendent of 41-23 Gleane Street provided for Mr. Gerez to two years earlier. On September 3, 2015, the building superintendent contacted the agents to advise that the broadcast equipment had been removed from the building. The agents consulted the City of New York's online property tax records and identified 92-01 Lamont Avenue LLC as the owner of 92-01 Lamont Avenue. On September 16, 2015, the New York Office sent 92-01 Lamont Avenue LLC a NOUO informing it that an unlicensed radio station was operating at 95.1 MHz at 92-01 Lamont Avenue and warning it that continued unlicensed operations could result in additional enforcement action.³ On September 21, 2015, the New York Office received a response to the NOUO confirming the removal of the broadcast antenna from the building's roof.

4. On February 4, 2016, the New York Office received a complaint from a consumer alleging that Mr. Gerez was operating an unlicensed FM broadcast station on 95.1 MHz at 83-40 Britton Avenue, Queens, New York. In response to the complaint, On February 10, 2016, an agent from the New York Office used mobile direction-finding techniques to confirm the presence of an unlicensed broadcast station operating on the frequency 95.1 MHz at 83-40 Britton Avenue. The agent took field strength measurements of the station's signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. The agent consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 95.1 MHz at or near 83-40 Britton Avenue. The agent then contacted the building superintendent, who identified Mr. Gerez as the owner and operator of the broadcast equipment and provided the agent with the same contact information for Mr. Gerez that others had provided during prior investigations. The building superintendent stated that he would remove Mr. Gerez's antenna and broadcast equipment. The agent consulted the City of New York's online property tax records and identified 83-40 Britton Avenue, LLC as the owner of 83-40 Britton Avenue. On February 12, 2016, the New York Office sent 83-40 Britton Avenue, LLC a NOUO informing it that an unlicensed radio station was operating at 95.1 MHz at 83-40 Britton Avenue and warning it that continued unlicensed operations could result in additional enforcement action.⁴ On February 18, 2016, the U.S. Postal Service confirmed delivery of the NOUO, but, to date, the New York Office has not received a response to the NOUO issued on February 12, 2016.

5. On April 27, 2016, the agent returned to 83-40 Britton Avenue to determine whether Mr. Gerez continued to operate an unlicensed FM broadcast station from that location. Although the agent did not observe an FM broadcast antenna at 83-40 Britton Avenue, he determined that there was a station

² *QPII-41-23 Gleane St LLC*, Notice of Unlicensed Operation (EB, New York Office, July 23, 2013).

³ *92-01 Lamont Avenue LLC*, Notice of Unlicensed Operation (EB, New York Office, Sept. 16, 2015).

⁴ *83-40 Britton Avenue, LLC*, Notice of Unlicensed Operation (EB, New York Office, Feb. 12, 2016).

still operating on 95.1 MHz. The agent then used mobile direction-finding techniques to identify the source of radiofrequency transmissions on the frequency 95.1 MHz as an FM antenna mounted on the roof of 99-10 Northern Boulevard in Queens, a mixed use building. The agent made audio recordings of the unlicensed stations programming and commercial advertisements. The agent took field strength measurements of the station's signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. The agent consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 95.1 MHz at or near 99-10 Northern Boulevard. The agent then contacted the property owner, who stated that he had granted permission to "Jose Luis" to locate and operate the unlicensed station at 99-10 Northern Boulevard in exchange for advertising on the unlicensed station. The owner provided the agent with the same mobile telephone number for "Jose Luis" that others had provided to agents in prior investigations for Mr. Gerez.⁵ The agent gave a verbal warning to the building owner and issued a Notice of Unlicensed Radio Operation (Field NOUO) to Mr. Gerez, which the agent left with the building owner.⁶ On May 2, 2016 the building owner contacted the agent and advised that, on April 30, Mr. Gerez removed the FM antenna and broadcast equipment from 99-10 Northern Boulevard. To date, the New York Office has not received a response to the Field NOUO issued to Mr. Gerez.

6. On June 14, 2016, an agent from the New York Office used mobile direction-finding techniques to identify the source of radiofrequency transmissions on the frequency 95.1 MHz as an FM antenna mounted on the roof of a multi-family dwelling located at 35-41 94th Street, Queens, New York. The agent took field strength measurements of the station's signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license. The agent consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 95.1 MHz at or near 35-41 94th Street. The agent made recordings of the unlicensed station's programming and commercial advertisements and, by comparing those recordings to those made on April 27, 2016, identified Mr. Gerez as the station's operator.

III. DISCUSSION

7. We find that Mr. Gerez apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act). Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States without a license granted by the Commission. Specifically, agents from the New York Office determined that Mr. Gerez operated an unlicensed radio station operated on 95.1 MHz from (a) 41-23 Gleane Street on July 23, 2013, (b) 92-01 Lamont Avenue on August 11 and 26, 2015, (c) 83-40 Britton Avenue on February 10, 2016, (d) 99-10 Northern Boulevard on April 27, 2016, and (e) 35-41 94th Street on June 14, 2016.

8. Following the investigations at the first three sites, the New York Office issued NOUOs to the building owners, which had the effect of inducing Mr. Gerez to remove his equipment and search for a new transmitter site. During the investigation at 99-10 Northern Boulevard, an agent from the New York Office issued a Field NOUO to Mr. Gerez, which achieved the same result, yet weeks later, an unlicensed station operating on 95.1 MHz began operating from a new location in Queens, New York. Mr. Gerez's established pattern of relocating his unlicensed FM broadcast station shortly after the building owner received a NOUO from the Commission demonstrates an awareness both of the Commission's attempts over the past several years to enforce Section 301 of the Act with respect to his unlicensed broadcast operations on 95.1 MHz, and that his continued operation of the unlicensed broadcast station on 95.1 MHz violates the Act.

⁵ See ¶¶ 2-4, *supra*.

⁶ *Jose Luis Gerez*, Notice of Unlicensed Radio Operation (EB, New York Office, March 27, 2016).

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰ Based on the record before us, Mr. Gerez’s apparent violations of Section 301 are both willful and repeated.

10. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”¹¹ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Gerez of up to \$16,000 for each day of a continuing violation, up to a statutory maximum of \$122,500 for a single act or failure to act.¹² In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context. H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”); see, e.g., *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁰ See 47 U.S.C. § 312(f)(2); *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹¹ 47 U.S.C. § 503(b).

¹² See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation this year. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644 (EB 2016); see also *Inflation Adjustment of Monetary Penalties*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment “shall apply only to violations which occur after the date the increase takes effect,” we apply the forfeiture penalties in effect at the time the apparent violations took place. 28 U.S.C. § 2461 note (6). Here, because the apparent violations at issue occurred before August 1, 2016, the applicable maximum penalties are based on the Commission’s previous inflation adjustment that became effective on September 13, 2013. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008). See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (EB 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases).

justice may require.”¹³ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹⁴ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁵

11. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation without an instrument of authorization for each violation or each day of a continuing violation.¹⁶ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹⁷ After applying the Forfeiture Policy Statement, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$10,000 for which Mr. Gerez is apparently liable.

IV. CONCLUSION

12. We have determined that Mr. Gerez apparently willfully and repeatedly violated Section 301 of the Act. As such, Mr. Gerez is apparently liable for a forfeiture of \$10,000.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁸ and Section 1.80 of the Rules,¹⁹ Jose Luis Gerez is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Ten Thousand Dollars (\$10,000) for willful and repeated violations of Section 301 of the Act.²⁰

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²¹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Jose Luis Gerez **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 17 below.

15. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Jose Luis Gerez shall send electronic notification of payment to NER-Response@fcc.gov and Matthew.Gibson@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹⁵ *Id.*

¹⁶ 47 CFR § 1.80(b).

¹⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 CFR § 1.80.

²⁰ 47 U.S.C. § 301.

²¹ 47 CFR § 1.80.

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

(payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

16. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²³ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁴ The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Region One, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to NER-Response@fcc.gov and Matthew.Gibson@fcc.gov.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Jose Luis Gerez at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski,
Regional Director, Region One
Enforcement Bureau

²³ See 47 CFR § 1.1914.

²⁴ 47 CFR §§ 1.16, 1.80(f)(3).